



INTERIOR BOARD OF INDIAN APPEALS

Estate of Charley Harry Hayes

39 IBIA 5 (02/24/2003)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

ESTATE OF CHARLEY HARRY HAYES : Order Docketing and Dismissing  
: Appeal  
:  
: Docket No. IBIA 03-52  
:  
: February 24, 2003

By memorandum dated February 7, 2003, Administrative Law Judge William E. Hammett forwarded to the Board of Indian Appeals (Board) two copies of a notice of appeal filed in the estate of Decedent Charley Harry Hayes by Appellant Freida J. Ellenwood. The Board received the copies on February 10, 2003. One of the notices of appeal was filed with Judge Hammett; the other was filed with the Northern Idaho Agency, Bureau of Indian Affairs. On February 21, 2003, the Board received a third copy of a notice of appeal which Appellant filed with the Secretary of the Interior. For the reason discussed below, the Board docketed this appeal, but dismisses it as untimely.

Appellant seeks review of a December 5, 2002, order which Judge Hammett issued in this estate. IP SL 238H 97. The Judge's order affirmed a decision issued on June 18, 1999; removed a stay of distribution entered on August 31, 1999; recognized a March 4, 1999, order issued by the Nez Perce Tribal Court; and dismissed a petition for rehearing.

A notice informing interested parties of their right to appeal to the Board was attached to Judge Hammett's December 5, 2002, order. That notice stated in pertinent part:

This decision becomes final sixty (60) days from the date of mailing of this notice unless within such period, a written notice of appeal shall have been filed with the Interior Board of Indian Appeals, Office of Hearings and Appeals, United States Department of the Interior, \* \* \* 801 North Quincy Street, Arlington, Virginia 22203-1905. **THE APPEAL MUST BE FILED IN ACCORDANCE WITH THE PROVISIONS OF 43 CFR 4.320.**

The Board has not received a notice of appeal from Appellant. None of the copies of the notice of appeal which the Board has received includes the Board on the distribution list, or otherwise evidences that Appellant sent her notice of appeal to the Board.

The timely filing of a notice of appeal with the Board is jurisdictional. See 43 C.F.R. § 4.320(a). The Board has consistently held that an appellant fails to file a timely notice of appeal when that person is given correct appeal information, but chooses to file an appeal with an official other than the Board, resulting in receipt of the appeal by the Board outside of the time for filing an appeal. See, e.g., Estate of Cecil Robert Sees the Ground, 37 IBIA 162 (2002); Estate of Frank Nelson Buffalomeat, 34 IBIA 120 (1999). Appellant was given correct appeal information, including the Board's mailing address, but chose not to file her notice of appeal with the Board. Despite the diligent efforts of employees in Judge Hammett's office and in the Office of the Secretary to forward the notices of appeal to the Board, the appeal was not timely when it was received.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from Judge Hammett's December 5, 2002, order is docketed but dismissed as untimely.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Kathleen R. Supernaw  
Acting Administrative Judge